

No. 09-3135

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

Oct 13, 2009

LEONARD GREEN, Clerk

UNITED STATES OF AMERICA,)	
)	
Plaintiff-Appellee,)	
)	<u>O R D E R</u>
v.)	
)	
DAVID E. WOLFENSPERGER,)	
)	
Defendant-Appellant,)	
)	
)	
ABN AMRO MORTGAGE GROUP INC.,)	
)	
Defendant.)	

Before: CLAY, GIBBONS, and McKEAGUE, Circuit Judges.

The defendant appeals the summary judgment for the government in this action brought under 26 U.S.C. §§ 7402(a) & (c) to reduce to judgment his unpaid assessed federal income taxes and to foreclose on federal tax liens against his real property. On June 19, 2009, the court denied his motion for a stay pending appeal. He moves for rehearing en banc of the June 19 order. The government opposes the motion for rehearing.

Generally the court does not rehear en banc orders that do not dispose of a case on the merits or on jurisdictional grounds. A motion improperly seeking rehearing en banc of a non-final order is to be treated as a motion panel rehearing. 6th Cir. I.O.P. 35(e). Upon consideration of the defendant's motion as a motion for panel rehearing, we conclude that the denial of a stay of the forfeiture judgment is warranted.

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In addition, on October 1, 2009, the defendant filed an emergency motion seeking a stay of an Order of Sale entered by the district court on September 8, 2009. The government opposes the emergency motion for a stay.

The September 8 order sets forth the procedures for the sale of the property and requires the defendant to vacate the premises within 30 days. In addressing this motion for a stay, we consider the following factors: 1) whether the defendant has demonstrated a likelihood of success on the merits; 2) whether he will be irreparably injured absent a stay; 3) whether issuance of the stay will substantially injure the other interested parties; and 4) where the public interest lies. *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). The defendant has the burden of demonstrating that a stay is warranted, and he is required to demonstrate more than a possibility of success on the merits. *See Nken v. Holder*, 129 S. Ct. 1749, 1761 (2009). He has not shown a likelihood of success on the merits, and the equities weigh in favor of denying a stay of the Order of Sale.

The motion for panel rehearing of the June 19 order is **DENIED**. The emergency motion for a stay of the September 8 Order of Sale is **DENIED**.

ENTERED BY ORDER OF THE COURT

A handwritten signature in cursive script, appearing to read "Leonard Green".

Leonard Green
Clerk

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Leonard Green
Clerk

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Tel. (513) 564-7000
www.ca6.uscourts.gov

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Mr. John A. Dudeck Jr.
U.S. Department of Justice
Tax Division, Appellate Section
P.O. Box 502
Washington, DC 20044

Mr. Randolph Lyons Hutter
U.S. Department of Justice
Tax Division, Appellate Section
P.O. Box 502
Washington, DC 20044

Mr. David E. Wolfensperger
1009 Shepherds Glen Lane
Batavia, OH 45103

Re: Case No. 09-3135, *USA v. David Wolfensperger, et al*
Originating Case No. : 07-00571

Dear Sir or Madam,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Florence P. Ebert
Case Manager
Direct Dial No. 513-564-7026
Fax No. 513-564-7098

cc: Mr. James Bonini

Enclosure